

Supreme Court, U.S.
FILED

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No. OFFICE OF THE CLERK

~~IN THE~~
Supreme Court of the United States

ROBIN SINGH EDUCATIONAL SERVICES, INC.,
D/B/A/ TESTMASTERS AND ROBIN SINGH,
Petitioners,

v.

TEST MASTERS EDUCATIONAL SERVICES, INC.
AND VIVEK ISRANI,
Respondents.

**Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Fifth Circuit**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a court violates the First Amendment and exceeds its authority under federal law by issuing an unprecedented injunction that *permanently* prohibits one of the largest test preparation companies in the nation from petitioning the United States Patent and Trademark Office ("PTO") for registration of its trademark.

2. Whether the Fifth Circuit erred by imposing an arbitrary "waiting period" for the development of secondary meaning, in conflict with settled trademark law, rulings from other Circuits, and modern economic reality.

PARTIES TO THE PROCEEDING

Pursuant to Rule 14.1(b), the following list identifies all of the parties appearing here and before the United States Court of Appeals for the Fifth Circuit in this matter:

The petitioners here and appellants below are Robin Singh Educational Services, Inc., d/b/a TestMasters, and Robin Singh.

The respondents here and appellees/cross-appellants below are Test Masters Educational Services, Inc., and Vivek Israni.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6, Petitioners state that Petitioner Robin Singh Educational Services, Inc., d/b/a TestMasters has no parent corporations and no publicly held corporation owns 10% or more of its stock.

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The opinion of the Court of Appeals is reported at 428 F.3d 559, and is reprinted in the Appendix to the Petition ("Pet. App.") at 1-38a. The Court of Appeals' unpublished order denying rehearing en banc is reprinted at Pet. App. 39-41a. The unpublished rulings of the United States District Court for the Southern District of Texas are reprinted at Pet. App. 42-72a, and Pet. App. 73-99a.

JURISDICTION

The Court of Appeals issued its decision on October 18, 2005. Petitioners' timely petition for rehearing en banc was denied on November 16, 2005. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS AT ISSUE

This case involves the First Amendment to the United States Constitution. *See* U.S. CONST. amend. I ("Congress shall make no law . . . abridging the freedom of speech . . . or the right of the people . . . to petition the Government for a redress of grievances."). This case also involves the Lanham Trademark Act, 15 U.S.C. § 1051 *et seq.*, relevant provisions of which are reproduced at Pet. App. 192-94a.

STATEMENT OF THE CASE

Petitioner Robin Singh Educational Services d/b/a/ TestMasters ("TestMasters") is one of the nation's leading test preparation companies, and is particularly well-established as a provider of Law School Admission Test ("LSAT") preparation courses. This case involves TestMasters' constitutional right to petition the United States Patent and Trademark Office ("PTO") for protection of its intellectual property—namely, its brand name and the